

**RESOLUTION NO. 18-057**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA APPROVING BALLOT MEASURE TEXT TO BE SUBMITTED TO THE VOTERS OF THE CITY IMPOSING A CANNABIS BUSINESS TAX; REQUESTING THE ASSISTANCE OF THE COUNTY OF SANTA CLARA IN CONNECTION WITH THAT ELECTION; AND REQUESTING CONSOLIDATION OF THAT ELECTION WITH ANY OTHER ELECTION HELD ON THAT DATE**

**WHEREAS**, Sections 37101 and 37100.5 of the California Government Code authorize the City to levy a license tax, for revenue purposes, upon business transacted in the City; and

**WHEREAS**, cannabis businesses are likely to create demands upon City services if permitted;

**WHEREAS**, the City Council desires to seek to impose a supplemental license tax upon cannabis businesses, to be known as the “Cannabis Business Tax”; and

**WHEREAS**, the Cannabis Business Tax cannot be imposed without voter approval; and

**WHEREAS**, the City Council desires to submit a Cannabis Business Tax measure to the voters of the City at the General Municipal Election to be held on Tuesday, November 6, 2018, and to be consolidated with any other election to be held on that date; and

**WHEREAS**, the proposed Cannabis Business Tax is more completely described in the ordinance attached hereto as Exhibit “A” and incorporated herein by reference (the “Tax Ordinance”).

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL AS FOLLOWS:**

**Section 1. Recitals.** The City Council hereby finds and determines that the foregoing recitals are true and correct.

**Section 2. Proposal.** The City Council hereby proposes the Cannabis Business Tax.

**Section 3. Election.** The City Council hereby calls a General Municipal Election for Tuesday, November 6, 2018 (the “Election”) and orders, pursuant to Section 9222 of the Elections Code, that the Cannabis Business Tax Ordinance be submitted to the voters at that election.

**Section 4. Ballot Question.** The question submitted under Section 3 of this Resolution shall appear on the ballot as follows:

Shall the Morgan Hill ordinance, to fund general municipal expenses such as police, fire, roads, recreation, and drug abuse prevention, by taxing cannabis (marijuana) businesses at annual rates not to exceed \$15.00 per canopy square foot for cultivation (adjustable for inflation) and up to 10% of gross receipts for all other cannabis businesses, which is expected to generate an estimated \$340,000 to \$750,000 annually and will be levied until repealed by the voters, be adopted?	YES	
	NO	

**Section 5. Approval.** Pursuant to Article XIII C of the Constitution, this measure requires approval by a majority (50% plus 1) of those casting ballots on the measure.

**Section 6. Consolidation.** Pursuant Section 10400 et seq. of the Elections Code, the Board of Supervisors of Santa Clara County (Board of Supervisors) is requested to consolidate the Election with other elections held on the same day in the same territory or in the territory that is in part the same.

**Section 7. Canvass.** The Board of Supervisors is authorized to canvass the returns of the Election pursuant to Section 10411 of the Elections Code.

**Section 8. Conduct of Election.** Pursuant to Section 10002 of the Elections Code, the Board of Supervisors is requested to permit the Santa Clara County Registrar of Voter's Office to render all services specified by Section 10418 of the Elections Code relating to the election, for which services the City agrees to reimburse the County, in accordance with current County pro-rations and allocation procedures.

**Section 9. Filing with County.** The City Clerk shall file a certified copy of this Resolution with the Board of Supervisors.

**Section 10. Analysis and Argument.** The City Council authorizes all members of the City Council to file written argument(s) In Favor of, or Against the measure described in Section 3 above, not exceeding 300 words, accompanied by the printed name(s) and signature(s) of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California. The arguments may be changed or withdrawn until and including the date fixed by the City Clerk after which no arguments for or against the ballot measure may be submitted to the City Clerk.

The City Attorney shall prepare an impartial analysis of the measure. Any person or persons may file an argument either for or against the ballot measure. An argument for or against the measure shall not exceed 300 words in length. If more than one argument is submitted for the measure, or more than one argument against the measure, the City Clerk shall select the argument to be included with the ballot materials. Rebuttal arguments shall be permitted pursuant to applicable law.

**Section 11.** In accordance with Elections Code section 9280, the entire text of the measure referenced in Section 3 above, shall not be placed in the voter information sample ballot and instead there shall be printed immediately below the impartial analysis, in no less than 10-point type, the following: "The above statement is an impartial analysis of the Ordinance of The City of Morgan Hill, California Adding Chapter 5.06 (Cannabis Business Tax) to Title 5 of the Morgan Hill Municipal Code. If you desire a copy of the measure, please visit <http://www.morgan-hill.ca.gov>, email the City Clerk at [clerk@morganhill.ca.gov](mailto:clerk@morganhill.ca.gov), or call the City Clerk at (408)779-7271 and a copy will be mailed or e-mailed at no cost to you."

**Section 12.** The primary arguments for and against the measure shall be submitted to the City Clerk by five o'clock p.m. on August 10, 2018 to meet the deadline established by the Santa Clara County Registrar of Voters for primary arguments. The arguments shall be filed with the City Clerk, signed, with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument. The arguments shall be accompanied by the Form of Statement To Be Filed By Author(s) of Argument to be provided by the City Clerk.

**Section 13.** In accordance with Elections Code section 9285(b), the City of Morgan Hill hereby authorizes the filing of rebuttal arguments as set forth below and in accordance with state law.

The elections official shall send a copy of an argument in favor of the proposition to the authors of any argument against the measure and a copy of an argument against the measure to the authors in any argument in favor of the measure immediately upon receiving the arguments.

The author, or a majority of the authors, of any argument relating to the measure may prepare and submit a rebuttal argument not exceeding 250 words or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument.

A rebuttal argument may not be signed by more than five authors.

The rebuttal arguments shall be filed with the City Clerk, signed with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers, not more than 10 days after the final date for filing direct arguments. The rebuttal arguments shall be accompanied by the Form of Statement to be provided by the City Clerk and to be filed by the author(s) of the argument.

Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

Rebuttal arguments for and against the measure shall be submitted to the City Clerk by five o'clock p.m. on August 17, 2018 to meet the deadline established by the Santa Clara County Registrar of Voters for rebuttals.



**Section 14. Effective Date.** This Resolution shall be effective immediately upon adoption.

**Section 15.** That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law.


**PASSED AND ADOPTED** by the City Council of Morgan Hill at the meeting held on this 18<sup>th</sup> day of July 2018 by the following vote:

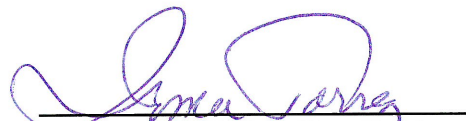
**AYES:**                      **COUNCIL MEMBERS:**      Steve Tate, Rich Constantine, Rene Spring,  
Caitlin Robinett Jachimowicz, Larry Carr

**NOES:**                      **COUNCIL MEMBERS:**      None  
**ABSTAIN:**              **COUNCIL MEMBERS:**      None  
**ABSENT:**                **COUNCIL MEMBERS:**      None

**APPROVED:**

**ATTEST:**

  
\_\_\_\_\_  
**STEVE TATE, Mayor**

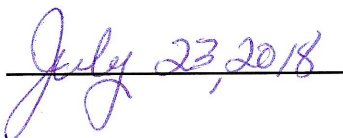
  
\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

**∞ CERTIFICATION ∞**

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 18-057, adopted by the City Council at the meeting held on July 18, 2018.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:**



  
\_\_\_\_\_  
**Irma Torrez, CITY CLERK**



**EXHIBIT A**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF MORGAN HILL,  
CALIFORNIA ADDING CHAPTER 5.06 (CANNABIS  
BUSINESS TAX) TO TITLE 5 OF THE MORGAN HILL  
MUNICIPAL CODE**

**THE PEOPLE OF THE CITY OF MORGAN HILL DO ORDAIN AS FOLLOWS:**

SECTION 1. CODE AMENDMENT. Chapter 5.06 is added to Title 5 of the Morgan Hill Municipal Code to read as follows:

**CHAPTER 5.06  
CANNABIS BUSINESS TAX**

**Sections:**

- 5.06.010 Title.
- 5.06.020 Authority and Purpose.
- 5.06.030 Intent.
- 5.06.040 Definitions.
- 5.06.050 Tax imposed.
- 5.06.060 Reporting and remittance of tax.
- 5.06.070 Payments and communications –timely remittance.
- 5.06.080 Payment – when taxes deemed delinquent.
- 5.06.090 Notice not required by City.
- 5.06.100 Penalties and interest.
- 5.06.110 Refunds and credits.
- 5.06.120 Refunds and procedures.
- 5.06.130 Personal cultivation not taxed.
- 5.06.140 Administration of the tax.
- 5.06.150 Appeal procedure.
- 5.06.160 Enforcement –action to collect.
- 5.06.170 Apportionment.
- 5.06.180 Constitutionality and legality.
- 5.06.190 Audit and examination of premises and records.
- 5.06.200 Other licenses, permits, taxes or charges.
- 5.06.210 Payment of tax does not authorize unlawful business.
- 5.06.220 Deficiency determinations.
- 5.06.230 Failure to report – nonpayment, fraud.
- 5.06.240 Tax assessment –notice requirements.
- 5.06.250 Tax assessment – hearing, application, and determination.
- 5.06.260 Relief from taxes-disaster relief.

- 5.06.270 Conviction for violation – taxes not waived.
- 5.06.280 Violation deemed misdemeanor.
- 5.06.290 Severability.
- 5.06.300 Remedies cumulative.
- 5.06.310 Amendment or repeal.

**5.06.010 Title.**

This ordinance shall be known as the Cannabis Business Tax Ordinance.

**5.06.020 Authority and Purpose.**

The purpose of this Ordinance is to adopt a tax, for revenue purposes, pursuant to Sections 37101 and 37100.5 of the California Government Code, upon Cannabis Businesses that engage in business in the City. The Cannabis Business Tax is levied based upon business gross receipts and square footage of plant canopy. It is not a sales and use tax, a tax upon income, or a tax upon real property.

The Cannabis Business Tax is a general tax enacted solely for general governmental purposes of the City and not for specific purposes. All of the proceeds from the tax imposed by this Chapter shall be placed in the City's general fund and be available for any legal municipal purpose.

**5.06.030 Intent.**

The intent of this Ordinance is to levy a business tax on all Cannabis Businesses that operate in the City, regardless of whether such business would have been legal at the time this Ordinance was adopted or is legal or illegal in the future. Nothing in this Ordinance shall be interpreted to authorize or permit any business activity that would not otherwise be legal or permissible under laws applicable to the activity at the time the activity is undertaken.

This ordinance was adopted by a vote of the people. The voter approved ballot measure allowed for a gross receipts tax of “up to ten (10) %”. This ordinance sets the gross receipts tax at 6%. Based upon voter authorization the gross receipts tax may be increased by the City Council up to no more than 10% in the future. The voter approved ballot measure allowed for a canopy tax of “not to exceed \$15.00”. This ordinance sets the canopy tax at various levels starting at \$10.00 per square foot and less for other types of growing operations. The City Council could increase the canopy tax up to the level of \$15.00 per square foot in the future.

**5.06.040 Definitions.**

The following words and phrases shall have the meanings set forth below when used in this Chapter:

A. “Business” shall include all activities engaged in or caused to be engaged in within the City, including any commercial or industrial enterprise, trade, profession, occupation,

vocation, calling, or livelihood, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his or her employer.

B. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis Indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" also means marijuana as defined by Section 11018 of the California Health and Safety Code and is not limited to medical cannabis.

C. "Cannabis product" means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product. "Cannabis product" also means marijuana products as defined by Section 11018.1 of the California Health and Safety Code and is not limited to medical cannabis products.

D. "Canopy" means all areas occupied by any portion of a cannabis plant whether contiguous or noncontiguous on any one site. When plants occupy multiple horizontal planes (as when plants are placed on shelving above other plants) each plane shall be counted as a separate canopy area.

E. "Cannabis business" means any business activity involving cannabis, including but not limited to cultivating, transporting, distributing, manufacturing, compounding, converting, processing, preparing, storing, packaging, delivering, testing, dispensing, retailing, and wholesaling of cannabis, of cannabis products or of ancillary products and accessories, whether or not carried on for gain or profit.

F. "Cannabis business tax" or "business tax," means the tax due pursuant to this Chapter for engaging in cannabis business in the City.

G. "Commercial cannabis cultivation" means cultivation in the course of conducting a cannabis business.

H. "City permit" means a permit issued by the City to a person to authorize that person to operate or engage in a cannabis business.

I. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis and includes, but is not limited to, the operation of a nursery.

J. "Employee" means each and every person engaged in the operation or conduct of any business, whether as owner, member of the owner's family, partner, associate, agent, manager, or solicitor, and each and every other person employed or working in such business for a wage, salary, commission, barter, or any other form of compensation.



K. "Engaged in business as a cannabis business" means the commencing, conducting, operating, managing, or carrying on of a cannabis business, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the City or coming into the City from an outside location to engage in such activities. A person shall be deemed engaged in business within the City if:

1. Such person or person's employee maintains a fixed place of business within the City for the benefit or partial benefit of such person;
2. Such person or person's employee owns or leases real property within the City for business purposes;
3. Such person or person's employee regularly maintains a stock of tangible personal property in the City for sale in the ordinary course of business;
4. Such person or person's employee regularly conducts solicitation of business within the City; or
5. Such person or person's employee performs work or renders services in the City.

The foregoing specified activities shall not be a limitation on the meaning of "engaged in business."

L. "Evidence of doing business" means evidence such as, without limitation, use of signs, circulars, cards, or any other advertising media, including the use of internet or telephone solicitation, or representation to a government agency or to the public that such person is engaged in a cannabis business in the City.

M. "Calendar year" means January 1 through December 31 of the following calendar year.

N. "Gross Receipts," except as otherwise specifically provided, means, whether designated a sales price, royalty, rent, commission, dividend, or other designation, the total amount (including all receipts, cash, credits, services and property of any kind or nature) received or payable for sales of goods, wares or merchandise or for the performance of any act or service of any nature for which a charge is made or credit allowed (whether such service, act or employment is done as part of or in connection with the sale of goods, wares, merchandise or not), without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, losses or any other expense whatsoever. However, the following shall be excluded from the definition of Gross Receipts:

1. Cash discounts where allowed and taken on sales;
2. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;

3. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;

4. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;

5. Cash value of sales, trades or transactions between departments or units of the same business;

6. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected they shall be included in the amount of gross receipts for the year when they are recovered;

7. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar;

8. Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the City's Finance Department with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.

9. Retail sales of t-shirts, sweaters, hats, stickers, key chains, bags, books, posters, rolling papers, cannabis accessories such as pipes, pipe screens, vape pen batteries (without cannabis) or other personal tangible property which the Tax Administrator has excluded in writing by issuing an administrative ruling per Section 5.06.140 shall not be subject to the cannabis business tax under this chapter. However, any business activities not subject to this Chapter as a result of the administrative ruling shall be subject to the appropriate business tax provisions of Chapter 5.04 or any other Chapter or Title as determined by the Tax Administrator.

O. "Lighting" means a source of light that is primarily used for promoting the biological process of plant growth. Lighting does not include sources of light that primarily exist for the safety or convenience of staff or visitors to the facility, such as emergency lighting, walkway lighting, or light admitted via small skylights, windows or ventilation openings.

P. "Nursery" means a facility or part of a facility that is used only for producing clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.

Q. "Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, whether organized as a nonprofit or for-profit entity, and includes the plural as well as the singular number.

R. "Sale" means and includes any sale, exchange, or barter.

S. "State" means the State of California.

T. "State license," "license," or "registration" means a state license issued pursuant to California Business & Professions Code Sections 26050, *et seq.* or other applicable state law.

U. "Tax Administrator" means the Finance Director of the City of Morgan Hill or his or her designee.

V. "Testing Laboratory" means a cannabis business that (i) offers or performs tests of cannabis or cannabis products, (ii) offers no service other than such tests, (iii) sells no products, excepting only testing supplies and materials, (iv) is accredited by an accrediting body that is independent from all other persons involved in the cannabis industry in the state and (v) is registered with the State Department of Public Health.

**5.06.050 Tax imposed.**

- A. Beginning January 1, 2019, there is imposed upon each person who is engaged in business as a cannabis business a cannabis business tax. Such tax is payable regardless of whether the business has been issued a cannabis business license or permit to operate lawfully in the City or is operating unlawfully. The City's acceptance of a cannabis business tax payment from a cannabis business operating illegally will not constitute the City's approval or consent to such illegal operations.
- B. The initial rate of the cannabis business tax shall be as follows:
1. For every person who is engaged in commercial cannabis cultivation in the City:
    - a. Ten dollars (\$10.00) annually per square foot of canopy space in a facility that uses exclusively artificial lighting.
    - b. Seven dollars (\$7.00) annually per square foot of canopy space in a facility that uses a combination of natural and supplemental artificial lighting.
    - c. Two dollars (\$2.00) annually per square foot of canopy space in a facility that uses no artificial lighting.



- d. One dollar (\$1.00) annually per square foot of canopy space for any nursery.

For purposes of this subdivision (B), the square feet of canopy space for a business shall be rebuttably presumed to be the maximum square footage of canopy allowed by the business's City permit for commercial cannabis cultivation, or, in the absence of a City permit, the square footage shall be the maximum square footage of canopy for commercial cannabis cultivation allowed by the state license type. Should a City permit be issued to a business which cultivates only for certain months of the year, the City shall prorate the tax as to sufficiently reflect the period in which cultivation is occurring at the business. In no case shall canopy square footage which is authorized by the City commercial cannabis permit but not utilized for cultivation be deducted for the purpose of determining the tax for cultivation, unless the Tax Administrator is informed in writing and authorizes such reduction for the purpose of relief from the tax prior to the period for which the space will not be used, that such space will not be used.

2. For every person who engages in the operation of a testing laboratory: two percent (2%) of gross receipts.
  3. For every person who engages in the retail sales of cannabis as a retailer (dispensary) or non-store front retailer (delivery) or microbusiness (retail sales): six percent (6%) of gross receipts.
  4. For every person who engages in a cannabis distribution business: four percent (4%) of gross receipts.
  5. For every person who engages in a cannabis manufacturing, processing, or microbusiness (non-retail), or any other type of cannabis business not described in Section (B) (1), (2), (3) or (4): four percent (4%) of gross receipts.
- C. The City Council may, by resolution or ordinance, adjust the rate of the cannabis business tax. However, in no event may the City Council set any adjusted rate that exceeds the maximum rate calculated pursuant to Subdivision (D) of this Section for the date on which the adjusted rate will commence.
- D. The maximum rate shall be calculated as follows:
1. For every person who is engaged in commercial cannabis cultivation in the City:
    - a. Through January 1, 2021, the maximum rate shall be:
      - i. Fifteen dollars (\$15.00) annually per square foot of canopy space in a facility that uses exclusively artificial lighting.
      - ii. Ten dollars (\$10.00) annually per square foot of canopy space in a

facility that uses a combination of natural and supplemental artificial lighting.

- iii. Seven dollars (\$7.00) annually per square foot of canopy space in a facility that uses no artificial lighting.
  - iv. Two dollars (\$2.00) annually per square foot of canopy space for any nursery.
- b. On January 1, 2022 and on each January 1 thereafter, the maximum annual tax rate per square foot of each type of canopy space shall increase by the percentage change between January of the calendar year prior to such increase and January of the calendar year of the increase in the Consumer Price Index ("CPI") for all urban consumers in the San Francisco-Oakland-Hayward area as published by the United States Government Bureau of Labor Statistics. However, no CPI adjustment resulting in a decrease of any tax imposed by this subsection shall be made.
- 2. For every person who engages in the operation of a testing laboratory, the maximum tax rate shall not exceed ten percent (10%) of gross receipts.
  - 3. For every person who engages in the retail sales of cannabis as a retailer (dispensary) or non-store front retailer (delivery business), or microbusiness (retail sales activity) the maximum tax rate shall not exceed ten percent (10%) of gross receipts.
  - 4. For every person who engages in a cannabis distribution business, the maximum tax rate shall not exceed ten percent (10%) of gross receipts.
  - 5. For every person who engages in a cannabis manufacturing, processing, or microbusiness (non-retail activity) or any other type of cannabis business not described in Section (D) (1), (2), (3) or (4), the maximum tax rate shall not exceed ten percent (10%) of gross receipts.

**5.06.060 Reporting and remittance of tax.**

- A. The cannabis business tax imposed by this Chapter shall be paid, in arrears, on a quarterly basis. For commercial cannabis cultivation, the tax due for each calendar quarter shall be based on the square footage of the business's canopy space during the quarter and the rate shall be twenty-five percent (25%) of the applicable annual rate. For all other cannabis businesses activities, the tax due for each calendar quarter shall be based on the gross receipts for the quarter.
- B. Each person owing cannabis business tax for a calendar quarter shall, no later than the last day of the month following the close of the calendar quarter, file with the Tax Administrator a statement of the tax owed for that calendar quarter and the

basis for calculating that tax. The Tax Administrator may require that the statement be submitted on a form prescribed by the Tax Administrator. The tax for each calendar quarter shall be due and payable on that same date that the statement for the calendar quarter is due.

- C. Upon cessation of a cannabis business, tax statements and payments shall be immediately due for all calendar quarters up to the calendar quarter during which cessation occurred.
- D. The Tax Administrator may, at his or her discretion, establish shorter report and payment periods for any taxpayer as the Tax Administrator deems necessary to ensure collection of the tax. The Tax Administrator may also require that a deposit, to be applied against the taxes for a calendar quarter, be made by a taxpayer at the beginning of that calendar quarter. In no event shall the deposit required by the Tax Administrator exceed the tax amount he or she projects will be owed by the taxpayer for the calendar quarter. The Tax Administrator may require that a taxpayer make payments via a cashier's check, money order, wire transfer, or similar instrument.
- E. For purposes of this section, the square feet of canopy space for a business shall be rebuttably presumed to be no less than the maximum square footage of canopy allowed by the business's City permit for commercial cannabis cultivation, or, in the absence of a City permit, the square footage shall be the maximum square footage of canopy for commercial cannabis cultivation allowed by the state license type. In no case shall canopy square footage which is authorized by the permit or license but not utilized for cultivation be excluded from taxation unless the Tax Administrator is informed in writing, prior to the period for which the space will not be used, that such space will not be used.

**5.06.070      Payments and communications – timely remittance.**

Whenever any payment, statement, report, request, or other communication is due, it must be received by the Tax Administrator on or before the final due date. A postmark will not be accepted as timely remittance. If the due date would fall on a Saturday, Sunday or a holiday observed by the City, the due date shall be the next regular business day on which the City is open to the public.

**5.06.080      Payment - when taxes deemed delinquent.**

Unless otherwise specifically provided under other provisions of this Chapter, the taxes required to be paid pursuant to this Chapter shall be deemed delinquent if not received by the Tax Administrator on or before the due date as specified in Sections 5.06.060 and 5.06.070.

**5.06.090      Notice not required by the City.**



The City may as a courtesy send a tax notice to the business. However, the Tax Administrator is not required to send a delinquency or other notice or bill to any person subject to the provisions of this Chapter. Failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this Chapter.

**5.06.100 Penalties and interest.**

A. Any person who fails or refuses to pay any cannabis business tax required to be paid pursuant to this Chapter on or before the due date shall pay penalties and interest as follows:

1. A penalty equal to ten percent (10%) of the amount of the tax, in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at the rate of one percent (1.0%) per month.

2. If the tax remains unpaid for a period exceeding one calendar month beyond the due date, an additional penalty equal to twenty-five percent (25%) of the amount of the tax, plus interest at the rate of one percent (1.0%) per month on the unpaid tax and on the unpaid penalties.

3. Interest shall be applied at the rate of one percent (1.0%) per month on the first day of the month for the full month and will continue to accrue monthly on the tax and penalty until the balance is paid in full.

B. Whenever a check or electronic payment is submitted in payment of a cannabis business tax and the payment is subsequently returned unpaid by the bank for any reason, the taxpayer will be liable for the tax amount due plus any fees, penalties and interest as provided for in this Section, and any other amount allowed under state law.

**5.06.110 Refunds and credits.**

A. No refund shall be made of any tax collected pursuant to this Chapter, except as provided in Section 5.06.120.

B. No refund of any tax collected pursuant to this Chapter shall be made because of the discontinuation, dissolution, or other termination of a business.

**5.06.120 Refunds and procedures.**

A. Whenever the amount of any cannabis business tax, penalty or interest has been overpaid, paid more than once, or has been erroneously collected or received by the City under this Chapter, it may be refunded to the claimant who paid the tax provided that a written claim for refund is filed with the Tax Administrator within one (1) year of the date the tax was originally due and payable.

B. The Tax Administrator, his or her designee or any other City officer charged with the administration of this Chapter shall have the right to examine and audit all the books and

business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of claimant's books and business records after request by the Tax Administrator to do so.

C. In the event that the cannabis business tax was erroneously paid, and the error is attributable to the City, the City shall refund the amount of tax erroneously paid up to one (1) year from the date that the tax was paid.

**5.06.130 Personal Cultivation Not Taxed.**

The provisions of this Chapter shall not apply to personal cannabis cultivation as defined in the "Medicinal and Adult Use Cannabis Regulation and Safety Act". This Chapter shall not apply to personal use of cannabis that is specifically exempted from City and state licensing requirements, that meets the definition of personal use or equivalent terminology under state law, and for which the individual receives no compensation whatsoever related to that personal use.

**5.06.140 Administration of the tax.**

A. It shall be the duty of the Tax Administrator to collect the taxes, penalties, fees, and perform the duties required by this Chapter.

B. For purposes of administration and enforcement of this Chapter generally, the Tax Administrator may from time to time promulgate such administrative interpretations, rules, and procedures consistent with the purpose, intent, and express terms of this Chapter as he or she deems necessary to implement or clarify such provisions or aid in enforcement.

C. The Tax Administrator may take such administrative actions as needed to administer the tax, including but not limited to:

1. Provide to all cannabis business taxpayers forms for the reporting of the tax;
2. Provide information to any taxpayer concerning the provisions of this Chapter;
3. Receive and record all taxes remitted to the City as provided in this Chapter;
4. Maintain records of taxpayer reports and taxes collected pursuant to this Chapter;
5. Assess penalties and interest to taxpayers pursuant to this Chapter;
6. Determine amounts owed and enforce collection pursuant to this Chapter.

**5.06.150 Appeal procedure.**

Any taxpayer aggrieved by any decision of the Tax Administrator with respect to the amount of tax, interest, penalties, and fees, if any, due under this Chapter may appeal to the City's Hearing Officer by filing a notice of appeal with the City Clerk within thirty (30) calendar days of the serving or mailing of the determination of tax due. The City Clerk, or his or her designee, shall fix a time and place for hearing such appeal, and the City Clerk, or his or her designee, shall give notice in writing to such operator at the last known place of address. The finding of the City's Hearing Officer shall be final and conclusive and shall be served upon the appellant in the manner prescribed by this Chapter for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of the notice.

**5.06.160 Enforcement - action to collect.**

Any taxes, penalties and/or fees required to be paid under the provisions of this Chapter shall be deemed a debt owed to the City. Any person owing money to the City under the provisions of this Chapter shall be liable in an action brought in the name of the City for the recovery of such debt. The provisions of this Section shall not be deemed a limitation upon the right of the City to bring any other action including criminal, civil and equitable actions, based upon the failure to pay the tax, penalties and/or fees imposed by this Chapter or the failure to comply with any of the provisions of this Chapter.

**5.06.170 Apportionment.**

If a business subject to the tax is operating both within and outside the City, it is the intent of the City to apply the cannabis business tax so that the measure of the tax fairly reflects the proportion of the taxed activity actually carried on in the City. To the extent federal or state law requires that any tax due from any taxpayer be apportioned, the taxpayer may indicate said apportionment on his or her tax return. The Tax Administrator may promulgate administrative procedures for apportionment as he or she finds useful or necessary.

**5.06.180 Constitutionality and legality.**

This tax is intended to be applied in a manner consistent with the United States and California Constitutions and state law. None of the tax provided for by this Chapter shall be applied in a manner that causes an undue burden upon interstate commerce, a violation of the equal protection or due process clauses of the Constitutions of the United States or the State of California or a violation of any other provision of the California Constitution or state law. If a person believes that the tax, as applied to him or her, is impermissible under applicable law, he or she may request that the Tax Administrator release him or her from the obligation to pay the impermissible portion of the tax.

**5.06.190 Audit and examination of premises and records.**

A. For the purpose of ascertaining the amount of cannabis business tax owed or verifying any representations made by any taxpayer to the City in support of his or her tax calculation, the Tax Administrator shall have the power to inspect any location where



commercial cannabis cultivation occurs and to audit and examine all books and records (including, but not limited to bookkeeping records, state and federal income tax returns, and other records relating to the gross receipts of the business) of persons engaged in cannabis businesses. In conducting such investigation, the Tax Administrator shall have the power to inspect any equipment, such as computers or point of sale machines, that may contain such records.

B. It shall be the duty of every person liable for the collection and payment to the City of any tax imposed by this Chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the City, which records the Tax Administrator or his/her designee shall have the right to inspect at all reasonable times.

**5.06.200 Other licenses, permits, taxes, fees, or charges.**

- A. Nothing contained in this Chapter shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any City Cannabis License, permit or license required by, under or by virtue of any provision of any other Chapter of this code or any other ordinance or resolution of the City, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other Chapter of this code or any other ordinance or resolution of the City. Any references made or contained in any other Chapter of this code to any licenses, license taxes, fees, or charges, or to any schedule of license fees, shall be deemed to refer to the licenses, license taxes, fees or charges, or schedule of license fees, provided for in other Chapter of this Code.
- B. Notwithstanding subdivision A of this Section a cannabis business shall not be required to pay the license fee required by Chapter 5.04 of Title 5 of this Code so long as all of business's activities within the City that would require payment of a license fee are activities subject to the cannabis business tax and the cannabis business tax exceeds the amount of the annual business tax for that particular cannabis business.
- C. The Tax Administrator may revoke or refuse to renew the license required by Chapter 5.04 of this Code for any business that is delinquent in the payment of any tax due pursuant to this Chapter or that fails to make a deposit required by the Tax Administrator pursuant to Section 5.06.060.

**5.06.210 Payment of tax does not authorize unlawful business.**

A. The payment of a cannabis business tax required by this Chapter, and its acceptance by the City, shall not entitle any person to carry on any cannabis business unless the person has complied with all of the requirements of this Code and all other applicable state laws.

B. No tax paid under the provisions of this Chapter shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any local or state law.

**5.06.220 Deficiency determinations.**

If the Tax Administrator is not satisfied that any statement filed as required under the provisions of this Chapter is correct, or that the amount of tax is correctly computed, he or she may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession within three (3) years of the date the tax was originally due and payable. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in a business, a deficiency determination may be made at any time within three (3) years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due. Whenever a deficiency determination is made, a notice shall be given to the person concerned in the same manner as notices of assessment are given under Section 5.06.240.

**5.06.230 Failure to report—nonpayment, fraud.**

A. Under any of the following circumstances, the Tax Administrator may make and give notice of an assessment of the amount of tax owed by a person under this Chapter at any time:

1. If the person has not filed a complete statement required under the provisions of this Chapter;

2. If the person has not paid the tax due under the provisions of this Chapter;

3. If the person has not, after demand by the Tax Administrator, filed a corrected statement, or furnished to the Tax Administrator adequate substantiation of the information contained in a statement already filed, or paid any additional amount of tax due under the provisions of this Chapter; or

4. If the Tax Administrator determines that the nonpayment of any business tax due under this Chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this Chapter and any other penalties allowed by law.

B. The notice of assessment shall separately set forth the amount of any tax known by the Tax Administrator to be due or estimated by the Tax Administrator, after consideration of all information within the Tax Administrator's knowledge concerning the business and activities of the person assessed, to be due under each applicable section of this Chapter, and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of assessment.

**5.06.240 Tax assessment - notice requirements.**

The notice of assessment shall be served upon the person either by personal delivery, by overnight delivery by a nationally-recognized courier service, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business or to such other address as he or she shall register with the Tax Administrator for the purpose of receiving notices provided under this Chapter; or, should the person have no address registered with the Tax Administrator for such purpose, then to such person's last known address. For the purposes of this Section, a service by overnight delivery shall be deemed to have occurred one (1) calendar day following deposit with a courier and service by mail shall be deemed to have occurred three (3) days following deposit in the United States mail.

**5.06.250 Tax assessment - hearing, application, and determination.**

Within thirty (30) calendar days after the date of service the person may apply in writing to the Tax Administrator for a hearing on the assessment. If application for a hearing before the City is not made within the time herein prescribed, the tax assessed by the Tax Administrator shall become final and conclusive. Within thirty (30) calendar days of the receipt of any such application for hearing, the Tax Administrator shall cause the matter to be set for hearing before him or her no later than thirty (30) calendar days after the receipt of the application, unless a later date is agreed to by the Tax Administrator and the person requesting the hearing. Notice of such hearing shall be given by the Tax Administrator to the person requesting such hearing not later than five (5) calendar days prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the Tax Administrator should not be confirmed and fixed as the tax due. After such hearing the Tax Administrator shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 5.06.240 for giving notice of assessment.

**5.06.260 Relief from taxes -disaster relief.**

A. If a business is unable to comply with any tax requirement due to a disaster, the business may notify the Tax Administrator of this inability to comply and request relief from the tax requirement;

1. A request for relief must clearly indicate why relief is requested, the time period for which the relief is requested, and the reason relief is needed for the specific amount of time.

B. The cannabis business agrees to grant the tax collector or his/her designee access to the location where the cannabis business has been impacted due to a Federal or State declared disaster.

C. The Tax Administrator, in his/her sole discretion, may provide relief from the cannabis business tax requirement for businesses whose operations have been impacted by

a disaster of such tax liability does not exceed five thousand (\$5,000) dollars. If such tax liability is five thousand one (\$5,001) dollars or more than such relief shall only be approved by the City's Hearing Officer;

D. Temporary relief from the cannabis tax may be granted for a reasonable amount of time as determined by the Tax Administrator or the City Council, as applicable in order to allow the cannabis business time to recover from the Federal or State declared disaster;

E. The Tax Administrator or City Council, as applicable may require that certain conditions be followed in order for a cannabis business to receive temporary relief from the cannabis business tax requirement;

F. For purposes of this section, "disaster" means fire, flood, storm, tidal wave, earthquake, or similar public calamity, whether or not resulting from natural causes which results in a Federal or State declaration of disaster.

**5.06.270 Conviction for violation - taxes not waived.**

The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this Chapter or of any state law requiring the payment of all taxes.

**5.06.280 Violation deemed misdemeanor.**

Any person violating any of the provisions of this Chapter shall be guilty of a misdemeanor.

**5.06.290 Severability.**

If any provision of this Chapter, or its application to any person or circumstance, is determined by a court of competent jurisdiction to be unlawful, unenforceable, or otherwise void, that determination shall have no effect on any other provision of this Chapter or the application of this Chapter to any other person or circumstance and, to that end, the provisions hereof are severable.

**5.06.300 Remedies cumulative.**

All remedies and penalties prescribed by this Chapter or which are available under any other provision of the Morgan Hill Municipal Code and any other provision of law or equity are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Chapter.



**5.06.310 Amendment or repeal.**

This Chapter may be repealed or amended by the City Council without a vote of the people to the extent allowed by law. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment that would increase the rate of any tax levied pursuant to this Chapter. The people of the City of Morgan Hill affirm that the following actions shall not constitute an increase of the rate of a tax:

- A. The restoration or adjustment of the rate of the tax to a rate that is no higher than that set by this Chapter, if the City Council has acted to reduce the rate of the tax or incrementally implement an increase authorized by this Chapter;
- B. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Chapter;
- C. The collection of the tax imposed by this Chapter even if the City had, for some period of time, failed to collect the tax;
- D. Should the ballot approval by the voters include an amount for tax listed as up to a certain percentage or amount, when this ordinance sets a lower percentage or amount, the City Council may increase the rate to the maximum amount or percentage contained in the ballot approved by the voter; or
- E. An increase in the tax on an annual basis of not more than the San Francisco – San Jose Cost of Living increase for the prior calendar year, starting the first day of January in the first full year after this measure is enacted by the voters.

SECTION 2. SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

This Ordinance was approved and adopted by the People of the City of Morgan Hill at the City's November 6, 2018 statewide election.

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Steve Tate, Mayor

ATTEST:

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Irma Torrez, City Clerk



